

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1084

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Docket No: 77-1084

Plaintiff-Appellee,

-against-

RAFAEL CUADROS,

Defendant-Appellant.

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DEFENDANT-APPELLANT'S APPENDIX

(CONTINUED)

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P/s

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2 Just a word or two more on what the law has to
3 say. You may consider the gun as a special means or tool
4 available to conspirators to further the objectives of
5 the conspiracy. When we say tool, I repeat, it is like
6 saying in the plumbing business that wrenches and washers
7 are some of the tools available to a plumber.

8 Similarly, a burglar may use flashlights or
9 gloves to further his illicit trade. It is in this light
10 that we use the term tools. You may find people in the
11 narcotics business use glassine bags, cutting paraphernalia
12 and occasionally guns. It is for you to decide whether
13 the gun before you, Exhibit 7, was used as a tool available
14 to further an illegal enterprise.

15 You may, but need not, find that the gun was
16 an appurtenance, an article related to the objective of
17 the conspiracy. I repeat, just because the gun was admitted
18 into evidence, you do not have to find that it was involved
19 in the alleged conspiracy. That is for you and you alone
20 to say.

21 Now, just give me a minute to catch my breath
22 and we will go on, and there isn't very much more left.

23 One of the Government's witnesses, Louis Prikas,
24 was admittedly a participant in the crime charged in the
25 indictment. The Government charges that one of the men

1 with whom Prikas committed these crimes was this defendant
2 on trial before you, Cuadros. In other words, that Prikas
3 was an accomplice of Cuadros. It is the universal rule in
4 the Federal Courts that a defendant may be convicted on
5 the uncorroborated testimony of an accomplice. There is
6 no requirement that such testimony be corroborated by other
7 evidence in the case.
8

9 I regretted that our good friend, and I say
10 that with respect, the representative of the Government,
11 used the word corroboration in the course of his summation.
12 But I interpreted it as not meaning that there had to be
13 supportive proof, but what he meant was that in addition
14 to a certain fact, there was additional proof supporting
15 that fact. That is the way he used the word corroborative.
16 I take it he did not mean that the law required corrobora-
17 tion.

18 MR. BENTLEY: That's correct, your Honor.

19 THE COURT: Thank you.

20 So you see, you do not have to corroborate
21 anything. You can believe one witness out of fifty, for
22 instance. That's your right. If that one witness tells
23 you something that you believe, you don't have to get
24 another witness or another piece of proof to support it.
25 If there is some more proof, that cements it ever so much

1
2 more tightly, but it isn't requisite. You may be over-
3 whelmingly satisfied from a certain piece of testimony,
4 you were so impressed with it.

5 An accomplice is any person who participates
6 in the commission of an alleged offense. The accomplice,
7 an associate in performing a crime, has the purpose of
8 either promoting, facilitating, or encouraging or aiding
9 another in committing a particular crime. The fact that
10 Mr. Prikas is an accomplice or has a criminal record is
11 to be carefully considered by you as bearing upon his
12 credibility. It is to be expected that the participants
13 in an enterprise so unholy and illegal will not be upright
14 gentlemen. You must realize, I'm sure, that in the
15 prosecution of a trial, the Government is frequently
16 called upon to use witnesses who are accomplices. Often
17 it has no choice. This is particularly so in the cases of
18 conspiracy. Frequently it happens that only the members
19 of the conspiracy and/or their accomplices have evidence
20 that is relevant to and important in the case.

21 However, it does not follow that because a
22 person has acknowledged his participation in a crime or is
23 an accomplice or has a criminal record that he is not
24 capable of giving a truthful version of what occurred.
25 That is for you to decide. For no one else.

2 And so it is with courage, everyone else wants
3 the other guy to be the courageous one. So it is with
4 truthfulness. It frequently comes from the most unlikely
5 sources. Those from whom we rightfully expect the truth,
6 very often we find it not forthcoming. And from those
7 from whom we would hardly expect it, from them sometimes
8 comes a veritable avalanche of convincing disclosure which
9 just simply gushes forth like a cataract.

10 Just because the Government must rely on
11 accomplices so often--that doesn't mean you may understand
12 that, but that doesn't mean that, therefore, you are going
13 to extend yourself and say that, well, what can the Govern-
14 ment do? It can only call such people. If you are not
15 convinced from their testimony, chuck it out. That's it.
16 I am just trying to say to you that it doesn't necessarily
17 follow that an accomplice would lie just because he is an
18 accomplice. But you have to determine that.

19 I even go so far as to say to you that the
20 testimony of an accomplice should be viewed by you with
21 caution and scrutinized with the utmost circumspection.
22 After you have done that and you still believe, hold on
23 to the belief. After you have applied that test, if you
24 have even a little bit of a doubt, throw it out and that's
25 the end of that.

And so you will consider whether the testimony of an accomplice was inspired by self-interest, personal advantage, hostility, or whatever other human factors may be involved. You should consider whether the testimony of such a person was a fabrication induced by a promise or even a belief that he will receive favorable consideration in his case. That's all up to you.

On the other hand, you may find on balance the testimony of an accomplice in light of the entire trial record is essentially truthful.

There is no requirement in the Federal Court that the testimony of an accomplice be corroborated. Conviction may rest on the uncorroborated testimony of an accomplice if you believe it and find it credible.

To acquit the defendant you need not find that any witness against him has lied. The test always is are you satisfied beyond a reasonable doubt from the entire record in accordance with the Court's instructions on the law of the guilt beyond a reasonable doubt of this defendant on trial.

And so, if you find the testimony of the accomplice Prikas was deliberately untruthful, reject it. If upon a cautious and careful examination, you are satisfied that the witness has given a truthful version

1 and the Government has sustained its burden of proof beyond
2 a reasonable doubt in all other respects as outlined in my
3 instructions, then you have sufficient proof on which to
4 bring in a verdict of guilty. Otherwise, the defendant
5 is entitled to an acquittal.
6

7 The Government contends that aside from the
8 testimony of Prikas, other proof of a reliable character
9 has been presented to you in support of the indictment.
10 There is indeed such additional proof. Its veracity or
11 believability is, as I have so often emphasized, an issue
12 that is to be resolved by the jury alone.

13 Now, ladies and gentlemen, I would say that
14 the greatest challenge to you in your evaluation of the
15 testimony as it came from the lips of witnesses and your
16 estimate of the exhibits and the stipulations -- what is
17 the greatest challenge? It is your estimate of the
18 testimony given by the witnesses and each of them that is
19 controlling and not that advanced by the attorneys or
20 suggested by anybody. They have a right to give you their
21 interpretation of the facts, but you are the sole judges
22 of the facts and the greatest burden you are going to have
23 is to estimate that testimony.

24 It is not, of course, the larger number of
25 witnesses called by one side as against the other that

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counts. Quality of proof is really the test. Inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses may or may not cause the jury to discredit such testimony. Very often it happens that when everything jibes all the way down the line, it quite often happens that everybody is lying. It's too pat, it's too secure, it's too bound up. It is devoid of human error and, therefore, subject to suspicion.

That to me doesn't mean to say that when you do see errors, that automatically means that someone is lying. It may very well be that that person has been exposed as being weak or not reliable. That is another proposition. But to expect exactitude is to apply a test that isn't always the surest measure of truth.

And so in weighing the effect of such a discrepancy, consider whether it pertains to a matter of importance or to an unimportant detail and whether the discrepancy results from inescapable error or falsehood. If you find a witness has testified falsely as to any material fact, you may reject all the testimony of that witness or you may accept such portion or part which commends itself to your belief.

In sizing them up in your search for the truth, you should be guided by your plain everyday common sense.

2 Oh, my dear friends, the law of common sense is obvious.
3 How many debacles I have seen, how many horrors I have seen
4 because of the failure of the people to know everything
5 except possess common sense.

6 And so you saw each witness. You observed the
7 manner of his giving testimony. Out of the welter of
8 testimony, you are called upon to determine the factual
9 issues in the case. Thus, upon all the evidence you, the
10 jury, you, the jury, are to resolve the conflict.

11 To acquit the defendant, ladies and gentlemen,
12 you need not find that any witness against him has lied.
13 The test always is are you satisfied beyond a reasonable
14 doubt from the entire record in accordance with the Court's
15 instructions of his guilt beyond a reasonable doubt. If
16 upon a cautious and careful examination you are satisfied
17 that the witnesses have given a truthful version and the
18 Government has sustained its burden of proof beyond a
19 reasonable doubt in all of the respects as outlined in my
20 instructions, then you have sufficient proof on which to
21 bring in a verdict of guilty. Otherwise the defendant is
22 entitled to an acquittal.

23 Your great strength, I repeat, is in your
24 common experience with humanity. You determine the value
25 of the testimony of each witness. Ask yourselves, how does

2 his testimony, referring to each witness, impress me?
3 What degree of credit should I give the witness' testimony?
4 It should be determined by his conduct, the way he testi-
5 fied, how he behaved on the stand. You looked at him.
6 Was he clean or was he hiding? Was he hiding something
7 important? Was he easy and free with his answers when the
8 going was easy and did he stumble a bit when there was a
9 crucial question? You saw these things. You evaluate
10 them.

11 Are the cops trying to clean up a record? Are
12 they trying to get a record of convicting another fellow?
13 Not what you read, not what you hear. What is this case?
14 There are always those who fall from grace in every
15 enterprise. Lawyers, judges, doctors, clergymen. That
16 doesn't dirty everybody.

17 And so you ask yourself, after you watched the
18 behavior and conduct of the witness on the stand, ask your-
19 self further his relation to the controversy, his bias or
20 impartiality and the reasonableness of his statements. Is
21 the witness interested in the outcome of the case? Is
22 there a motive to testify falsely? Was the witness
23 mistaken? Was he correct? In other words, what you try
24 to do, to use the vernacular, is to size up a person just
25 as you would in any important matter when you are under-

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2 taking to determine whether or not a person is truthful,
3 candid and straightforward.

4 A witness may be discredited or impeached by
5 contradictory evidence that some other time he has said
6 or done something or failed to do or say anything which is
7 inconsistent with his present testimony. The testimony
8 of any witness whose self-interest is regarded as convincing
9 to you is to be regarded with great caution and weighed
10 with great care.

11 You should consider the witness' intelligence,
12 motive, state of mind, demeanor while on the stand. You
13 should consider his candor or lack of candor, his possible
14 bias, his means of information and the accuracy of his
15 recollection.

16 If you believe that any witness has been
17 impeached and thus discredited, it is your exclusive
18 province to give the witness' testimony such credibility
19 as you think it deserves. Your determination of the
20 credibility of the witness very largely depends upon the
21 impression he made upon you and the conviction with which
22 he testified as to whether or not he was truthful and
23 accurate.

24 The fact that a witness is an official or
25 employee of the Government does not mean by itself, does

not mean by itself that you should give greater or special credit to his testimony. The testimony of any such witness should be weighed and scrutinized in the same manner as any other witness who testified in this case. You judge their testimony in the same way, taking into account interest or any factor which may have influenced them to color or fabricate their testimony.

Examine with care for the clean or the impure motive that prompts the testimony of a witness. As to each witness, what was the witness' motive? Did the witness commit perjury in order to get the defendant convicted or was the testimony induced by an unflinching desire to tell the truth? Ask yourselves whether the testimony that was adduced was presented because of a dislike of a defendant or because of revenge or for any other impure motive. Does the trial record point to a wrongful reason which would prompt the testimony, or do you believe the testimony as so given was given as they knew the facts to be and scrupulously observed their oath? All of this is for you to evaluate.

There has been testimony that the defendant made a number of statements intending to show his innocence at the time of his arrest. Specifically in an interview in the office of the United States Attorney on December 17,

1 1975, the day after his arrest. Cuadros claimed that he
2 had agreed to accompany Valdes to Manhattan, not knowing
3 the purpose of the trip; that he had left Valdes' car and
4 while out of the car had placed a call to his wife from
5 the telephone booth but had not lingered on the sidewalk
6 in front of the informant's building; that Valdes had not
7 carried anything out of the car; that he had not noticed
8 Valdes carry anything back to the car and that he had not
9 noticed the bag containing cocaine, Government's Exhibit 1
10 in evidence, which the agents found on the passenger side
11 of the car where Cuadros was seated at the time of the
12 arrest. There has been other evidence in the case which,
13 if believed by you, would show that some or all of the
14 statements just mentioned were false.
15

16 Specifically, among other matters in evidence,
17 Prikas testified that Valdes said that Cuadros was supplying
18 the cocaine. Gray testified that Cuadros had stood in
19 front of 300 East 74th Street for approximately fifteen
20 minutes without making a phone call. Prikas testified that
21 as he and Valdes were about to enter Lubash's building,
22 Valdes handed him the shopping bag. Gray, Kelley and
23 Prikas, as I remember, and if I am in error, forget it,
24 your recollection is what controls, your recollection is
25

paramount, Gray, Kelley and Prikas all testified that Valdes carried the shopping bag to the car where it was found by the arresting agents.

I charge you that exculpatory statements, if and when you find them to be false, are circumstantial evidence of guilty consciousness and have independent probative force.

There has been testimony to the effect that Valdes and another participant charged in the crime of this case, fled the country when released on bail and is now living in Colombia. I instruct you that you may draw no inferences adverse to either the Government or the defendant from the failure of either the Government or the defendant to call him as a witness.

Now, I am drawing to a close but not without telling you what the law has to say about a defendant who takes the stand. Cuadros took the stand. He testified after being sworn. What has the law to say with regard to a defendant who testifies? The law permits, but does not require, a defendant to testify in his own behalf. The testimony of Cuadros is before you. You and only you can determine how much credibility or believability his testimony is entitled to or how little.

However, I instruct you that it is the law that

2 interest creates a motive to give false testimony; that
3 the greater the interest, the stronger is the temptation
4 to falsify and that the interest of a defendant in the
5 result of a trial is of a character possessed by no other
6 witness and is therefore a matter which may affect the
7 credence which shall be given to his testimony. Such is
8 the law.

9 However, let me point out that the fact that
10 the defendant has such an interest greater than any other
11 witness in the outcome of the case does not mean that he
12 will testify falsely. It is for you, the jury, to decide
13 whether he testified truthfully and how much weight to
14 give to his testimony.

15 Please be just a bit more patient with me and
16 I'll be through. I want to cover everything that I feel
17 must be covered.

18 The testimony of a witness may be discredited
19 or impeached by showing a witness has been convicted of a
20 felony, that is, a crime punishable by imprisonment for a
21 period of years. Prikas admitted that he pleaded guilty
22 and that is a conviction. You can be convicted by pleading
23 guilty, just like you can be convicted after a verdict by
24 a jury.

25 I want you to know what the law has to say

2 about a witness who has a criminal conviction. Prior
3 conviction does not render a witness incompetent to testify
4 but is merely a circumstance which you may consider in
5 determining the credibility of the witness. It is the
6 province of the jury to determine the weight to be given
7 to any prior conviction.

8 The use of the informant Lubash. There has
9 been testimony with respect to the use by narcotics agents
10 of the services of an informant, who was the person to whom
11 the one pound of cocaine was to be sold. Whatever you
12 think of informants, the Government uses them in order to
13 get leads to those who are violating the law. Whether
14 you and I disapprove of this is really beside the point
15 provided that such services in no way infringe upon the
16 rights of the defendant because of the use of such services.
17 It is not forbidden by law. I repeat, such services are
18 not forbidden by law. You are not being asked to determine
19 whether or not you endorse the use of informants. You
20 are being directed to follow the law.

21 Putting it another way, if you are satisfied
22 beyond a reasonable doubt, as I have already defined
23 reasonable doubt for you, that on the dates and at the
24 places with which we are concerned the defendant committed
25 the offenses charged in the indictment, you must find him

2 guilty even though you believe his apprehension came about
3 in some measure by the Government availing itself of the
4 services of an informant.

5 There has been testimony to the effect that
6 Valdes, another participant in the crime, charged -- and
7 I have already told you that and given you the instruction.
8 You can't hold it against either side because he wasn't
9 called.

10 Now, I come to the conclusion.

11 Now I conclude. When we lay down as the law
12 and the spirit of the law that a defendant is presumed to
13 be innocent until the Government fulfills its obligation
14 of proving him guilty beyond a reasonable doubt, and all
15 those other propositions of law that I have tried to
16 emphasize and to delineate for you, each one equally sacred,
17 we must not lose sight of the rights of the other party to
18 this litigation, the plaintiff, the Government. We must
19 bear in mind, and I so charge you, an equally equal concept
20 of justice defined in **classic** fashion by the Supreme
21 Court of the United States and hence the law of the land,
22 "Justice though due to the accused is due to the accuser
23 also."

24 I remind you once again that criminal respon-
25 sibility is rooted in the individual, his attention,

2 motive, conduct. Please bear in mind that guilt is personal.
3 If you find that the law has not been violated, you should
4 not hesitate for any reason to return a verdict of not
5 guilty. That would be your sworn obligation.

6 On the other hand, if you find the law has
7 been violated as charged on either or both of the counts,
8 you should not hesitate because of sympathy or any other
9 reason to render a verdict of guilty because in your
10 concept of what is required here, that would be the justice
11 of the case, if you so decide. If that is your decision,
12 it will also constitute a clear warning that a crime of
13 this character may not be committed with impunity. The
14 public is entitled to be assured of this.

15 There has been talk about fifteen years and
16 thirty years and all that sort of thing. I didn't want to
17 talk about it but what am I to do, remain silent when I
18 hear that thrown around? The jury is entitled to a word
19 or two of explanation. Those figures represent what the
20 law provides as the maximum penalty and a judge may very
21 well, under that same section, place a person on probation
22 or give him one day. It is entirely up to the Court. A
23 full record of a defendant, of a human being, not only his
24 criminal record but his entire behavior is looked into by
25 the Probation Department of the Court and before the day of

the sentence that complete material, like an X-ray for a surgeon, is before the Judge, and he can find out who the defendant is, brothers, sisters, prior record, work, service, this and that, and in that way participate in the sentence **addressing** not only to the act committed, but to the human being involved. And there is nobody except the Almighty who can tell what a sentence will be when, as and if a conviction takes place after a jury delivers a verdict. Because it takes weeks before the sentence comes up and no one knows what is going to be revealed, including the Judge.

So that's a lot of almost meaningless talk.

The emphasis should be placed on this, that the Judge could not, under any circumstances, no matter what kind of human being is before him, convicted of a certain kind of crime, give him more than what the law says. That's what is meant by the maximum. The Judge can't say to a defendant that you have been a no good punk, this, that and the other, denounce him within an inch of his life for all kinds of misdeeds, horrible to contemplate and say I wish I could hand you a hundred years. Well, you can't, Judge. All you can give him is the maximum. That's what is meant by the maximum. It doesn't follow at all that the maximum is automatically imposed. It depends on who is before the Court. And that shouldn't be any

2 of your consideration because I'll tell you very frankly,
3 it's none of your business, and that's the law.

4 Under your oath as jurors, you cannot and must
5 not allow a consideration of the punishment which may be
6 inflicted upon a defendant, if he is convicted, to influence
7 your verdict in any way. If you did that, you would be
8 violating your own oath. That duty rests exclusively with
9 the Judge and not with you. You have enough of a respon-
10 sibility.

11 I want a verdict, to use the words of counsel
12 for the defendant, I want a verdict not based on sympathy
13 or bias. I want a verdict based on the evidence and the
14 law applicable to the evidence. And that is the only test.
15 Not what a man may receive by way of a sentence. Not all
16 these other things that are hurled in order to create
17 some kind of feeling. It has nothing at all to do with it,
18 nothing whatever.

19 The indictment in this case contains two counts.
20 Each count charges a separate crime. There are facts and
21 elements common to both counts, but you must consider each
22 count separately as to the defendant on trial and return
23 a separate verdict of guilty or not guilty for each of the
24 two counts in the indictment. So you will be asked,
25 Foreman Fox, how does the jury find with regard to Count 1,

1 guilty or not guilty? How does the jury find with regard
2 to Count 2, guilty or not guilty? It is as simple as that.

3 The verdict, whether for acquittal or guilty,
4 must be unanimous. Each juror is entitled to his own
5 opinion. You should exchange your views, have respect for
6 one another's views, understand one another, adopt another's
7 views if it appeals to you. This is not a jury of one or
8 three or five or of eleven. It is a jury of twelve and
9 the vote must be unanimous.
10

11 And so the law says that you must listen to the
12 arguments of your fellow jurors. You must consult with
13 one another. You must reach an agreement based solely and
14 wholly on the evidence, if you can do so without violence
15 to your own individual judgment. And you are asked to
16 employ that high degree of genuine courage that you
17 justifiably expect, especially in these perilous times,
18 from your public officials. You should not hesitate to
19 change an opinion which upon a consideration of all the
20 evidence with your fellow jurors appears erroneous.

21 However, if after carefully considering all
22 the evidence and the arguments of your fellow jurors, you
23 entertain a conscientious view that differs from others,
24 you are not to yield your convictions simply because you
25 are outnumbered or outweighed.

2 The exhibits, I'm not waiting for anybody to
3 tell me what to do with them. Both sides are instructed
4 to collect their exhibits and turn them over to the Clerk
5 who will, in turn, turn them over to the marshal. That's
6 the direction of the Court.

7 If to help you in your deliberations, you wish
8 a point or points in the testimony read, please specify
9 exactly as possible just what point you wish the official
10 court reporter to locate, and it will be read to you, no
11 matter how much time it takes.

12 There is a welter of testimony and we have to
13 know what you are talking about and what it is you want,
14 if you do want anything. It has to be searched for.
15 Therefore, tell me, please, what it is that you would like
16 to have read and we will be glad to oblige you.

17 Your oath, ladies and gentlemen of the jury,
18 sums up your duty. What is it? Without fear or favor to
19 any man, you will well and truly try the issues between
20 this defendant and the United States of America according
21 to the evidence given to you in open court and according
22 to the laws of the United States, and that is what you
23 swore to do. I have every confidence that you will fulfill
24 your sworn obligation as American ministers of justice, to
25 render a true verdict based solely and exclusively on the

facts and on the law in this case.

If the Government has carried its burden in accordance with the evidence and the law as to the defendant, you must not flinch from your sworn duty. You must convict. But, if the Government has failed to carry its burden as to this defendant, your sworn duty is to acquit.

I repeat what I told you when you were being selected. I told you about Mr. Justice Robert Jackson of New York who sat on the Supreme Court of the United States and how he told an admiring group of lawyers that a judge should do his utmost to call them as he sees them, as they come across the plate, and that is exactly what the law demands, I said demands, not requests, the law demands of you. That you, the judges of the facts, call them as you, the jury, sees them as they come across the plate.

What goes on in the jury room is no one else's business but yours. No one belongs in there but you. No one has a right to put a foot in there without your permission. You are to talk to no one outside the jury room. Just send out a note if you want anything or if you have reached a verdict.

And this I say with measured tones, you have undoubtedly talked about justice in your homes and in your daily affairs, in your comings and in your goings, as is your

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2 inalienable right. The point is that now each of you
3 sits in the seat of justice. How will you do? Apply
4 your criticism of justice to yourselves. Will you call
5 them as you see them? Will you do justice as between the
6 Government on one side and the defendant on the other,
7 solely on the facts and on the law? This Judge has every
8 confidence that that is exactly what you will do.

9 We await your verdict whether it comes soon
10 or late, this evening or tomorrow or whenever it is your
11 pleasure to advise us. The ball will pass to you shortly.
12 You begin the second phase of your vital mission.

13 I hope you will be good enough to excuse the
14 Court and counsel, and I wonder since it is now almost
15 10:40, whether the part of wisdom would dictate that you
16 take a short recess while I talk to counsel.

17 Take the jury.

18 (Jury leaves.)

19 THE COURT: Any exceptions or requests by
20 the Government?

21 MR. BENTLEY: None whatsoever, your Honor.

22 THE COURT: Exceptions or requests by
23 defendant?

24 MR. LEWIS: Exceptions first?

25 THE COURT: Yes.

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2 MR. LEWIS: First I would request with regard
3 to requests that the Court charge the missing-witness charge
4 with regard to the two police officers who were allegedly
5 on duty on East 74th Street and who the Government did
6 not call.

7 THE COURT: Granted. Next?

8 MR. LEWIS: I secondly would ask that the
9 Court charge --

10 THE COURT: In fact, I think the Government
11 gave me that request to charge.

12 Mr. Bentley, did you not?

13 MR. BENTLEY: Yes, sir, we gave you that. I
14 was looking for the number for the record.

15 MR. LEWIS: Only as to Valdes, your Honor.

16 THE COURT: At any rate, I will so charge.

17 MR. LEWIS: I ask the Court charge that a
18 conspiracy may have existed without the defendant being a
19 party to it and such conspiracy could not in any way be
20 held against the defendant.

21 THE COURT: It has been so charged.

22 Next?

23 MR. LEWIS: Respectfully except to that,
24 your Honor.

25 I respectfully request that the Court charge

1 that in order to convict the defendant here of the crime
2 of conspiracy as alleged in the indictment, there must be
3 proof beyond a reasonable doubt that the defendant knowingly
4 and willfully associated himself with and participated in
5 such unlawful enterprise.
6

7 THE COURT: Your request is noted and denied.
8 The Court feels it has amply covered that point.

9 MR. LEWIS: I further respectfully request
10 that the Court charge the jury that in deciding whether or
11 not the defendant was a member of the alleged conspiracy,
12 they must consider only the credible evidence presented
13 of what he said and what he did and that a person may not
14 under any circumstances be found to be a member of a
15 conspiracy upon evidence of what some other individual has
16 said or done, and that this rule would apply even in a
17 situation in which you have concluded that the other
18 individual or individuals were themselves a member of a
19 conspiracy.

20 THE COURT: Does the Government wish to say
21 anything?

22 MR. BENTLEY: That matter was amply covered,
23 your Honor.

24 THE COURT: I thought so. The Court will
25 stand on the charge.

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2 MR. LEWIS: I have exceptions to your Honor's
3 charge. I have some exceptions.

4 THE COURT: Please rattle them off.

5 MR. LEWIS: Generally, so I don't take too
6 much of the Court's time, I object to the Court's charge
7 with regard to conspiracy and further to the time that the
8 Court spent on that portion of the charge and the reitera-
9 tion and repetition involved in the charge, in that I think
10 it gave undue emphasis to that portion of the charge and
11 thereby could influence the jury and prejudice the rights
12 of the defendant.

13 THE COURT: Very well.

14 MR. LEWIS: I further take exception to the
15 comment made by the Court on the summation of Mr. Bentley,
16 and I take exception to permitting Mr. Bentley to make a
17 statement during and in the course of the Court's charge
18 wherein he indicated that he agreed or acquiesced in what
19 the Court is saying.

20 I further except to the comment by the Court
21 in its charge as to the statement about the cops trying
22 to convict.

23 I further except to that portion of your
24 Honor's charge that would indicate that the test of the
25 defendant is more -- that the testimony, rather, of the

2 defendant would appear to be more suspect than the
3 testimony of a convicted felon, when the Court discussed
4 the relative testimony of the defendant and the relative
5 testimony of Mr. Prikas. The words used by the Court gave
6 and would give, in counsel's opinion, the distinct impres-
7 sion that the testimony of a convicted felon would be more
8 likely to be true in a case of this type than the testimony
9 of a defendant.

10 I respectfully except to the Court, at approxi-
11 mately 9:52 in the charge, saying "The point we emphasize
12 in regard to the gun," in that that places the Court in
13 the position of the prosecutor. That word "we" I think
14 should be explained to the jury.

15 I further object to the Court's asides to the
16 jury during the course of the charge in that I feel that
17 that could give the wrong impression to the jury, depending
18 upon what was said prior to the remark being made to the
19 jury with regard to do you understand or don't you under-
20 stand, and that could give the jury the impression that
21 there is more importance to that portion of the charge or
22 that portion of the charge could be more detrimental to
23 the defendant.

24 I further object to the comment by the Court
25 at approximately sometime between 6:10 and 6:30 or 6:40 p.m.,

1 I can't read my own writing here, where the Court said or
2 quoted a remark about Justice Brandeis when it ceases to
3 be difficult, or something to that effect, in that it
4 would be more difficult to find a **defendant guilty than**
5 to find him not guilty. By making a statement like that,
6 I believe the jury can also be prejudiced in its delibera-
7 tions.
8

9 That's all I was able to note, your Honor.

10 THE COURT: I think the record should show
11 that we have been greatly aided in this charge by adopting
12 almost the exact charge we gave in a case involving
13 identical counts which has recently been affirmed by the
14 Circuit Court of Appeals. Having found that language
15 acceptable in that prior case, US v. **Magnano** we felt
16 encouraged to use almost word for word a great deal of the
17 language employed tonight by the Court in this case.

18 Very well. Anything on the part of the Govern-
19 ment?

20 MR. BENTLEY: One minor point, your Honor.

21 Your Honor made reference to our Request
22 Number 20, the uncalled cumulative witness request. Mr.
23 Lewis has requested a so-called missing witness charge.

24 THE COURT: I have that. Here is what I
25 intend to say, and listen to me, both of you. I think he is

2 right. I omitted it. Let's face it, that page was not
3 numbered and it was my fault, but here it is: I would also
4 instruct you there is no presumption against the Government
5 from its failure to call a witness where it appears that
6 his testimony would be merely cumulative, repetitious and
7 of no greater value than that of the witnesses who have,
8 in fact, testified.

9 Then I will go on and say, there has been
10 testimony to the effect that Valdes, another participant
11 in the crime charged -- I did already say that, didn't I? --
12 fled this country. I instruct you that you may draw no
13 inference adverse to either the Government -- I did charge
14 as to the missing witness charge. But he says I didn't
15 charge as the failure of the Government to call a couple
16 of the agents for the Government.

17 Did you submit a charge on that?

18 MR. BENTLEY: I submitted a charge which
19 reads -- may I read it?

20 THE COURT: Yes.

21 MR. BENTLEY: I would also instruct you there
22 is no presumption against the Government from its failure
23 to call a witness when it appears that his testimony would
24 be merely cumulative --

25 THE COURT: I just got through reading that.

2 MR. BENTLEY: Exactly.

3 THE COURT: We are all tired.

4 MR. LEWIS: However, the charge should also
5 mention about if that testimony is not cumulative, and
6 then it is up to the jury to decide.

7 THE COURT: Bring in the jury, please.

8 (Jury present.)

9 THE COURT: The purpose of the few minutes
10 that you were absent was to get from both sides whatever
11 they wished to say to the Court with regard to the Court's
12 charge. That takes some time. There is one thing that I
13 do want to call to your attention, and that is all. I
14 want to say something with regard to witnesses who were
15 not called to the stand.

16 The law is that there is no presumption against
17 the Government from its failure to call a witness or
18 witnesses when it appears that his testimony or their
19 testimony would be merely cumulative, repetitious and of
20 no greater value than that of the witnesses who have in
21 fact testified. I just want to add that to the totality
22 of my charge and include that as a charge to the jury.

23 Now, ladies and gentlemen, the time actually
24 is ten minutes to eleven. The cars to take you home are
25 downstairs. They can start now, they can start in a half

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2 hour, they can start in an hour. The Judge and the lawyers
3 will await your pleasure. You have to tell us what you
4 want. Now it's yours. We are here to serve you and help
5 you.

6 (Pause.)

7 THE COURT: I want to add that with regard
8 to my last instruction it is for you, the ladies and gentle-
9 men of the jury, to decide whether or not such testimony
10 would be cumulative.

11 All right, counsel, let me have your note.

12 (Pause.)

13 THE COURT: I have finished with the charge,
14 counsel. We will make what you have just written part of
15 the Court record. Mark it as a Court exhibit.

xxx 16 (Court Exhibit 1 is marked.)

17 THE COURT: Mr. Clerk, please proceed.

18 THE CLERK: Will the marshal step forward,
19 please.

20 (The marshal was duly sworn.)

21 THE COURT: Ladies and gentlemen, I have
22 said this to juries over and over again over the decades
23 and I hope I will be able to say it some more, that is,
24 when it comes to a jury question, when it comes to facts,
25 justice rides with the jury.

2 Take the jury and we await your pleasure. When-
3 ever you tell us you want to go, whatever you want to do,
4 you can tell the marshal and he will bring your message
5 to me and we will act accordingly.

6 Thank you.

7 THE CLERK: The two alternate jurors, your
8 Honor.

9 THE COURT: It all depends on what you decide
10 to do as to what hour we start.

11 THE FOREMAN: Your Honor, I think most of
12 the jurors would like to leave now.

13 THE COURT: Won't you please let me know.
14 Is it your desire to leave now?

15 (All jurors indicate in the affirmative.)

16 THE COURT: Marshal, take the jurors down
17 to the cars. I would like to have the alternates return
18 tomorrow. The jurors have not begun their deliberations.
19 You will please not talk about this case to anyone whatso-
20 ever, say nothing whatever and come back to this court
21 promptly. You fix the hour. Who wants 9 o'clock? Who
22 wants 10 o'clock?

23 (The majority of the jurors raise hands.)

24 THE COURT: Take the jurors to the cars,
25 please. See that each one is taken to his and her home.

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2 You will have to come down tomorrow on your
3 own steam. There won't be any limousine tomorrow.

4 (Jury leaves at 10:55 p.m.)

5 THE COURT: The note that was handed up by
6 Mr. Lewis reads, "You did not charge if the testimony of
7 the Government witnesses was not merely cumulative and
8 mention both agents on 74th Street."

9 The record is covered.

10 Thank you one and all.

11 (An adjournment was taken to December 10, 1976,

12 at 10 a.m.)

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2 UNITED STATES OF AMERICA

3 vs.

75 Cr. 1254

4 RAFAEL CUADROS

5 December 10, 1976
6 10 A.M.

7 * * * *

8 Trial resumed.

9 * * * *

10 (In open court, jury present.)

11 THE COURT: The Court directed that the
12 exhibits be gathered, turned over to the marshal by our
13 Clerk and the marshal, in turn, will hand them to the jury.

14 You are now about to enter upon your deliberations.
15 It becomes unnecessary for the two alternates to
16 remain but I will not let them go, Mr. Chambers and
17 Mr. Gastonway, without thanking them for participating in
18 this trial. They reflected, and I saw them, or I noticed
19 every juror, and they concentrated, they leaned forward
20 to grasp every word. That was characteristic of the entire
21 jury. Devoted, concerned and caring. For that we extend
22 our sense of appreciation.

23 Thank you very much.

24 Won't you please step down and take a seat in
25 the courtroom until the jury actually physically moves to

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2 enter upon their deliberations.

3 Mr. Foreman, ladies and gentlemen of the jury,
4 the case is now in your hands. You are directed to leave
5 this courtroom and enter the jury room and take up your
6 deliberations.

7 All rise.

8 (At 10:10 a.m., the jury retired to
9 commence their deliberations.)

10 THE COURT: The marshal will get the clothing
11 of these two alternates.

12 May I say to both of you when you get your
13 clothing I hope you will leave the building and don't talk
14 to anybody.

15 The Clerk tells me you have to go down to
16 Room 109. You may have other jury duty to perform.

17 All right, counsel.

18 MR. LEWIS: May I speak now, your Honor?

19 THE COURT: Yes.

20 MR. LEWIS: I wish to state to the Court
21 that it has come to my attention at this time through my
22 client, I was unaware of it until this morning, that the
23 Government has withheld evidence in this case in that my
24 client informs me that when he was brought to the court-
25 house here, there was an agent whose name he does not know -

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2 THE COURT: Wait a minute. Brought where?

3 MR. LEWIS: Brought to the courthouse after
4 his arrest. I assume it was the 18th. An agent, whom he
5 does not know, whom he was with here with other agents,
6 and I think Gray was present also. The other agent said
7 to him that you remember me from that night. I saw you on
8 74th Street. I saw you making a phone call. That is a
9 Government agent and employee, he should have been known
10 and in all probability was known to the Government and
11 that individual was not brought into court here.

12 That point was raised through cross examination
13 by me when I cross examined Mr. Gray about the other two
14 agents who were on 74th Street and then it was brought up
15 by me in summation.

16 I also requested the Court to charge the jury
17 with regard to the fact that the Government did not produce
18 those two agents. The Court refused my charge. In fact,
19 the Court gave the charge --

20 THE COURT: I know what the Court gave.
21 What else do you want to say?

22 MR. LEWIS: That's what I want to say.

23 THE COURT: Therefore, your motion is?

24 MR. LEWIS: That the jury should be informed
25 about this or a mistrial or at the very least this man

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should be brought here to tell the Court in private whether
or not what my client tells me is so.

THE COURT: Who is the man?

MR. LEWIS: He describes him -- may I just
ask him a second?

THE COURT: You are going to ask him now
for the first time?

MR. LEWIS: No, I spoke to him outside today
about it.

THE COURT: Such a person could be available
to you as to the prosecution.

How are they going to know?

MR. LEWIS: There were two agents who were
on East 74th Street according to Mr. Gray and those agents
should be produced here and that man could be questioned
by the Court.

THE COURT: What would the Government care
to say?

MR. BENTLEY: First of all, Mr. Lewis was
furnished long before this trial the pertinent documents
reflecting the names of all the agents who were present on
the scene during the surveillance in this case. He never
asked to interview any of those agents either before trial
or during trial. Had he made such a request, we certainly

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2 would have brought them in here and had them interviewed.

3 I have no knowledge of any such information,
4 any statement by an agent who may have seen Mr. Cuadros
5 making a telephone call. There is nothing in the documentary
6 materials which I have reviewed that suggests that such an
7 agent exists.

8 I simply say that this disclosure comes after
9 the close of the proof, after the Court's charge, at a very
10 convenient time. Mr. Cuadros has been here in this room
11 since Monday morning of this week and he heard the testi-
12 mony, he sat through his own cross examination and it never
13 occurred to him before his counsel rested his case that
14 someone had told him they saw him making a telephone call.
15 There is simply no foundation for this motion whatsoever.

16 MR. LEWIS: Your Honor, there would be no
17 prejudice to the Government or to anyone to have this agent
18 brought here and for the Court to speak to this agent in
19 the absence of the jury to make a determination in the
20 interests of justice, and certainly in the interests of
21 fairness to this defendant.

22 THE COURT: Will you please state on the
23 record, I think you have already, that this is the first
24 time that the defendant said anything to you on that score
25 was this very morning, you said.

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2 MR. LEWIS: Yes, your Honor.

3 THE COURT: He never even intimated that
4 before to you, his own lawyer.

5 MR. LEWIS: He never said that to me before,
6 your Honor.

7 THE COURT: Motions are denied, each and
8 every one of them.

9 (Recess.)

10 (At 11:15 a.m., notes were received
11 from the jury.)

12 (In open court, jury not present.)

13 THE COURT: The jury has sent us two notes.
14 One of them, which has been marked 2-A for identification
15 by the Clerk, reads, "Officer Gray's testimony about what
16 he found in the console of the car. Cuadros' testimony
17 about traveling from Queens to Manhattan, both direct
18 examination and cross."

19 The note is signed by Foreman Fox.

20 The second note is 2-B, and that reads,
21 "Bentley's cross of Cuadros about the gun."

22 Mr. Court Reporter, I understand these notes
23 were not put in an envelope and shown by our clerk to you,
24 so I gather you have already been aware of it and I wonder
25 about how long it will take you to dig out this particular

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2 material.

3 THE REPORTER: It's all ready, your Honor.

4 THE COURT: Bring the jury in, marshal.

5 (Jury present.)

6 THE COURT: Mr. Foreman, the attorneys on
7 both sides and the Court are aware of the two notes that
8 you have sent us, one of them calling for Gray's testimony
9 about what he found in the console of the car and Cuadros'
10 testimony about traveling from Queens to Manhattan and
11 that the jury would like to have both the direct examina-
12 tion and cross examination on those two points. In addi-
13 tion, your note with regard to Mr. Bentley's cross examina-
14 tion of Cuadros about the gun.

15 Our excellent court reporter has already dug
16 it out and is ready to read it to you.

17 Will you please do so, Mr. Court Reporter.

18 (The reporter read the record as
19 directed.)

20 THE COURT: We are indebted to you, Mr.
21 Reporter, for the alacrity and your completeness of reading
22 the testimony.

23 The jury will please continue with your
24 deliberations. May I ask, Mr. Foreman, when you send a
25 note, be sure that you put it in an envelope, seal the

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2 envelope and write on the name "Judge Cooper." No one else
3 is to see your notes except the Judge. The Judge will then
4 reveal them to counsel.

5 Thank you very much.

6 (At 12:25 p.m., the jury again retired
7 to continue their deliberations.)

8 (2:20 p.m.)

9 (In open court, jury present.)

10 THE COURT: In the order of receipt of your
11 messages since we last met with each other -- by the way,
12 Mr. Court Reporter, would you be good enough to indicate
13 on the record the time when you finished reading the testi-
14 mony before lunch. And now will you note that it's about
15 2:22 and I'm reading to the jury what has been marked in
16 the order of receipt Court's Exhibit 3 for identification,
17 which reads:

18 "We would like to hear Prikas' testimony on
19 direct and cross."

20 It is signed by the Foreman.

21 I for identification says:

22 "We would like the tape played, Exhibit
23 Government Number 4," signed by the Foreman.

24 So, will you be good enough now, Mr. Court
25 Reporter to respond to the jury's request as to Prikas'

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2 testimony on direct and cross.

3 THE FOREMAN: May I ask a question before
4 we begin?

5 THE COURT: Would you write it out because
6 I don't want you to say something that you shouldn't.

7 Take your time and write it out.

8 (Pause.)

9 THE COURT: The jury would like to know if
10 they can take notes during the reading of the testimony.
11 That's a very understandable question but the answer is no.
12 The law forbids it, and for the simple reason, like I tried
13 to explain every charge by the Court yesterday, and let
14 me spend a moment on it so you understand.

15 The taking of notes might just reflect what
16 the taker remembers of that particular point and the jury
17 might be influenced for better or for worse by the use of
18 a particular note. It may result in more trouble than
19 good. And so the wiser course is to ask you to listen, as
20 you have, and to concentrate on everything that takes place
21 and put it together and if you don't, come on in, tell the
22 Court you would like to have something read, which you
23 have done, and that's the best way.

24 All right, Mr. Court Reporter.

25 (Direct and cross examination of Mr. Perkins)

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2 read by reporter.)

3 THE COURT: Let the record show now it's
4 almost ten of four. Let's go to the tape.

5 (Government's Exhibit 4 in evidence, is
6 played for the jury.)

7 THE COURT: Thank you, ladies and gentlemen.
8 The Court appreciates the spirit with which you are going
9 about your mission. That's all anybody can do.

10 Take the jury, marshal.

11 (At 3:50 p.m., the jury again retired
12 to continue their deliberations.)

13 (At 5:35 p.m., a note was received
14 from the jury.)

15 (In open court, jury present.)

16 THE COURT: Our efficient court reporter has
17 been able to dig this out right away for you and he is
18 about to read, in answer to your note:

19 "Can we please have Officer Nolla's cross
20 examination?"

21 Won't you please proceed, Mr. Court Reporter.

22 (Cross examination of Mr. Nolla read by
23 the reporter.)

24 THE COURT: Ladies and gentlemen of the jury,
25 the quality of your splendid spirit prompts me to be very

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2 open and frank with you on what I think you should know
3 at this time.

4 In the first place, it is five minutes of six.
5 Nobody could applaud you more than the Judge and I'm sure
6 counsel join me in this, in saying that any jury that cares
7 so deeply and is so conscientious deserves our salute and
8 certainly our utmost consideration.

9 You are not, you are absolutely not to serve
10 anybody's convenience but your own. We are here, the
11 attorneys and the Judge are here to wait upon you, your
12 convenience. Yours is the burden now.

13 What does that mean? It means that if you
14 decide after you go in and deliberate further that you
15 would like to go to dinner, just say so. If you want to
16 repeat what we did last night, say so. If you feel that
17 you would rather not go on this evening, say so, and I'll
18 go on and do something that I hope will meet with your
19 convenience, and that is, adjourn the deliberations until
20 Monday. I want you to know that that is the least the Judge
21 can do for you. But you are going to make the choice. I
22 am ready to go along, and I'm sure counsel are, no matter
23 what you decide. If you want to stay here the way you did
24 last night, we will repeat it.

25 I just wanted to make it perfectly clear. That

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2 is to say, that it is Friday. The only reason I emphasize
3 Friday is that the restaurants around here do not keep
4 open as late, I am told, and so you will just have to give
5 your orders a little early or be taken over a little
6 earlier tonight than last night in order to be sure about
7 it. But I think around 7 o'clock will be just as good
8 tonight as it was last night.

9 I have no idea how close you are to a verdict,
10 whether there is a verdict or whether you are far from it.
11 That is your business. But I do feel you are entitled to
12 know what plans we can make to accommodate you. That is
13 the whole purpose of my emphasizing it.

14 Have I made myself clear?

15 (All jurors indicate in the affirmative.)

16 THE COURT: I await your decision. Whatever
17 you decide to do, we will act accordingly.

18 (At 6:05 p.m., the jury again retired
19 to continue their deliberations.

20 (In open court, jury not present.)

21 THE COURT: It is now about 8:13. As you
22 know, gentlemen, the jury sent a note in about 6:30 and
23 agreed they would leave at eight and to please order three
24 cars and can we order up some sandwiches. And then they
25 list the kind of food they would like to have.

I immediately directed that the food be obtained and brought to the jury. I am told by the Clerk that it arrived about 7:30.

The impression I get from the note, which I am going to ask the Clerk to mark as a Court exhibit, is that the jury chose to leave at 8 o'clock. Now, I don't know whether they are waiting for me to call them at 8:00 or whether they are going on with their deliberations.

Send for the marshal, Mr. Clerk.

(Pause.)

THE COURT: Marshal, the jurors' note around 6:30 said that we will leave at 8:00. Now, will you please inquire what is their pleasure, do they want to leave at 8:00 or do they want to stay on? Whatever they wish, does, but I would like to know what it is they wish to do. Do they want to stay on or leave or what does 8 o'clock mean? I understood it to mean they wanted to leave at 8 o'clock. So find out what they now want to do, will you please?

THE MARSHAL: Yes, your Honor.

THE COURT: Mr. Clerk, in the meantime, mark this as a Court's exhibit.

(Court's Exhibits 1 through 5 marked.)

(Pause.)

THE MARSHAL: Your Honor, it is their wish

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2 to leave now or as soon as possible.

3 THE COURT: Will you bring them in, please.

4 (Jury present.)

5 THE COURT: Mr. Fox and ladies and gentlemen
6 of the jury, the limousines await you. They are ready to
7 take you home.

8 I don't want you to leave, however, without my
9 telling you that as pretty much of an old-timer in this
10 field I salute each one of you, regardless of what has
11 happened there, what is in your minds. I salute you for
12 caring, for being so concerned with your mission. In all
13 the years that I have functioned as a judge I have hardly
14 ever, out of thousands of cases, seen a miscarriage of
15 justice where, 1, the jury cares, is deeply concerned and
16 each one strains himself and herself to the utmost, to the
17 breaking point; and, 2, where the Judge upholds his oath
18 and assumes full responsibility for the discharge of his
19 obligation under his oath; and, 3, where the attorneys
20 measure up to their sworn obligations.

21 It is only when one of that trinity or more
22 than one fail that justice fails.

23 And so when I see a jury laboring the way you
24 have, the very atmosphere conveys your determination to
25 fulfill your obligation, and that is all we can ask of

2 human beings. That kind of spirit, even though I have
3 seen all these cases, is a renewal of my faith, if any were
4 ever needed, that our system is the best system. And
5 that goes for no matter what way you call it, as long as
6 you bring to it what I have indicated, a sense of dedica-
7 tion, deep concern and caring for the upholding of the law.

8 Have a good weekend. Take care of yourselves.
9 We need each one of you. Remember not to talk about this
10 case. The law says I have to constantly remind you of
11 that.

12 Remember, too, that if anyone tries to contact
13 you directly or indirectly in any fashion whatever, I am
14 not requesting, I am directing, I am ordering that you
15 report to me. I have nothing to indicate that any such
16 thing will happen. I am just reminding you of it and what
17 your obligation is under the circumstances.

18 I salute you. Good night, ladies and gentlemen.

19 JUROR NO. 2: 10 o'clock Monday?

20 THE COURT: No, I have another commitment.

21 Have a good evening and come back at 11:30 Monday morning.

22 THE CLERK: Marshal, will you return the
23 exhibits to the respective parties, and will the respective
24 parties submit the exhibits Monday morning promptly, please.

25 (Adjourned to December 13, 1976, at

11:30 a.m.)

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2 UNITED STATES OF AMERICA

3 vs.

75 Cr. 1254

4 RAFAEL CUADROS

5 December 13, 1926
6 11:55 a.m.

7 * * * *

8 Trial resumed.

9 * * * *

10 (in open court, jury present.)

11 THE COURT: Good morning. I'm glad that
12 the wind didn't blow any of you away.

13 Let the record show that it is now noon and
14 the jury, every member of the jury is here.

15 Will you please, ladies and gentlemen, continue
16 with your deliberations. Your presence and what I have
17 just said has been recorded.

18 Will you announce a recess, Mr. Clerk.

19 (At 12 noon, the jury retired to continue
20 their deliberations.)

21 (5:25 p.m., in open court, jury present.)

22 THE COURT: I have your note and our court
23 reporter has acted expeditiously. Your note reads:

24 "Can we have direct examination of Cuadros with
25 regard to what merchandise he sold? Also the cross examination

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2 tion."

3 Mr. Fox, I didn't quite understand whether you
4 meant the cross examination on that point of merchandise
5 that Cuadros sold or do you want the whole cross examina-
6 tion of Cuadros?

7 MR. FOX: Just on the point of merchandise
8 he sold.

9 THE COURT: On direct and cross?

10 MR. FOX: Yes.

11 THE COURT: Mr. Court Reporter, would you
12 proceed.

13 (Portion of direct examination of Mr. Cuadros
14 read.)

15 THE COURT: He hasn't located anything on
16 cross.

17 Very well, ladies and gentlemen.
18 Speak up if there is something that comes to
19 your mind.

20 JUROR NO. 4: Does that mean there is no
21 evidence on that point on cross?

22 THE COURT: He has examined the record and
23 finds none.

24 Thank you, ladies and gentlemen of the jury,
25 we await your pleasure.

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(Court Exhibit 6 marked.)

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(At 5:35 p.m., the jury again retired

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to continue their deliberations.)

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1
2 UNITED STATES OF AMERICA
3 v.
4 RAFAEL CUADROS

5 December 13, 1976,
6 2:30 P.M.

7 --

8 (Jury present)

9 THE COURT: I have received your note which reads
10 "would you please define what charge number 2 is (possession
11 with intent to sell under the law) 2. Please define
12 reasonable doubt". Signed by the foreman.

13 In the first place, I would like very much
14 to express the appreciation of the court and I am sure
15 counsel may join me in this that you have not hesitated
16 to send in notes and tell us how it is we could help. Do
17 not hesitate to do that and I am glad that you have shown
18 that you take the judge at his word because I have said
19 that to you many times.

20 The first thing we will take up is in the inverse
21 order. I will take up the issue of what the law has to say
22 on reasonable doubt. What does the law mean when it says
23 prove the case beyond a reasonable doubt? Does it mean prove
24 it beyond all possible doubt, absolute doubt? Absolutely
25 not. How much evidence does the government have to place
before a jury, this jury, in any criminal case including of

1 hbh 2

2 course this case? The words are reasonable doubt and they
3 mean that there is a doubt founded in reason, not imaginary,
4 but founded in reason and arising out of the nature of the
5 evidence in the case or the lack of evidence in the case.
6 It means a doubt which a reasonable person has after careful
7 weighing all the evidence. It means a doubt that is sub-
8 stantial and not shadowy, reasonable doubt is a fair doubt,
9 a doubt which appeals to your reason, your judgment, your
10 common sense, your understanding and existing from the
11 state of the evidence. Reasonable doubt is a doubt that
12 would cause a person to hesitate to act in matters of im-
13 portance in his own private life.

14 A defendant is not to be convicted on suspicion,
15 conjecture, or even impressive evidence which does not
16 rise to the dignity of significant persuasiveness. Reason-
17 able doubt is not caprice, whim, speculation, it is not
18 an excuse to avoid the performance of an unpleasant duty,
19 it is not sympathy for a defendant or a desire to uphold
20 the government. If after a careful and impartial consideration
21 of all the evidence in the case from beginning to end
22 and that includes of course the sworn testimony, the
23 stipulations, the exhibits, the impression that each witness
24 made on you on the stand, the entire trial record, it is on
25 that after looking it over, studying it, bearing every

1 hbh3

2 facet of it in mind, after a careful and impartial considera-
3 tion of it from start to finish, if you can candidly and
4 honestly say that you are not satisfied of the guilt of
5 a defendant and that you do not have an abiding conviction
6 of his guilt which amounts to a moral certainty, then you
7 have a reasonable doubt and in that circumstance, it is
8 your duty to acquit.

9 On the other hand, if after such a fair and im-
10 partial consideration you can candidly and honestly say
11 that you are satisfied of the guilt of a defendant, that
12 you do have an abiding conviction of his guilt which amounts
13 to a moral certainty, I mean such conviction or certainty
14 as you would be willing to act upon in important and
15 weighty matters in your personal affairs, in your own private
16 lives, then you have no reasonable doubt and in that cir-
17 cumstance it is your duty to convict.

18 One final word on this subject. A reasonable doubt
19 does not mean a positive certainty or beyond all possible
20 doubt. This is not a mathematical problem. You are dealing
21 with human beings with flesh, with bone, with tissue. If
22 that were the rule that you had to be convinced beyond all
23 possible doubt, few men however guilty they might be
24 would ever be convicted, for it is practically impossible
25 for a person to be absolutely and completely convinced of any

controverted fact which by its very nature is not susceptible of mathematical certainty. Almost daily some of you if not every one of you have had occasions to determine whether or not a certain situation exists in your own private affairs, there may not be any writing whatever, you have to depend on the impression people make on you, what the circumstances were, what your evaluation of the people involved is. You have done that time and time again in order to determine whether you are convinced beyond a reasonable doubt that such and such took place. You are forming those judgments with frequency. We all are and when you have a real, a true doubt, you say "I doubt".

I think there is something there, I am suspicious. That is not enough. But when you say under those circumstances I am convinced of it, I feel absolutely certain, not certain beyond all possible doubt, but I have no reasonable doubt and that is what the law has in mind. It is as simple as that.

That really in essence, ladies and gentlemen of the jury, is the law on reasonable doubt.

Now, we come to Count 2. That is the second charge against this defendant. What is the language of the charge in Count 2? The grand jury further charges on or about the 16th day of December, 1975, in the Southern District

1 hhh 5

2 of New York, Jaime Valdes, Louis Prikas and Cuadros, this
3 defendant, those three unlawfully, intentionally and
4 knowingly did distribute and possess with intent to distribute
5 cocaine.

6 Now you see, it is either one. They actually
7 did distribute it or they had it in their possession with
8 intent to distribute it. The law doesn't say you've got
9 to wait until there is an actual sale. That is another
10 proposition of law. There are many violations of law
11 with regard to narcotic drugs. This happens to be the one
12 that is charged against this defendant is the one that
13 charges not that he actually consummated a sale, but that
14 he had it in his possession with intent to distribute
15 it. Let me read it to you again.

16 On or about the 16th day of December, 1975,
17 in the Southern District of New York, Valdes, Prikas and
18 Cuadros, the defendants unlawfully, intentionally and
19 knowingly did distribute and possess with intent to distribute
20 narcotic drugs, approximately one pound of cocaine. I tell
21 you again either one would constitute a crime. The actual
22 distribution or possessing it with intent to distribute it.
23 What are the elements of this Count 2? What must be proven
24 beyond a reasonable doubt? First let me say before
25 I come to that, let me tell you what the statute

1 hhh6

2 says on which this charge is predicated. What is the law?
3 What is the law? Here is the law on Count 2. I read you
4 only the pertinent language. "It shall be unlawful for any
5 person knowingly or intentionally to distribute or
6 possess with intent to distribute a controlled substance."
7 You notice the statute makes it far more certain. It
8 says "To distribute or possess with intent."

9 It doesn't say and possess with intent to
10 distribute. Let me repeat that. "It shall be unlawful for
11 any person knowingly or intentionally to distribute or
12 possess with intent to distribute a controlled substance
13 including cocaine." Then the statute goes on to say "Whoever
14 aids, abets, counsels, commands, induces, or procures an
15 offense against the United States is guilty of an offense."
16 Before you can find the defendant guilty of the crime charged
17 in Count 2 of this indictment, you must be convinced beyond
18 a reasonable doubt that the government has proved the
19 following elements. What are they? 1. That on or about
20 December 16, 1975, the defendant distributed or possessed
21 with intent to distribute a narcotic drug controlled substance
22 cocaine in this case. Or aided and abetted another in the
23 distribution of a narcotic drug controlled substance or
24 aided and abetted another in possessing such a substance
25 with intent to distribute it.

1 hbh 7

2 Secondly, this must be proved beyond a reasonable
3 doubt that he did so unlawfully, wilfully and knowingly.

4 Third, that the substance which the government
5 claims was distributed or was possessed with intent to
6 distribute is in fact a narcotic drug controlled substance.
7 I will come to the aiding and abetting to which the statute
8 refers in just a few minutes.

9 Let's take up the first element. I told you
10 that there were three. It deals with the word distribute
11 or possess with intent to distribute. As I have said, the
12 first element you must find that the defendant in your
13 consideration aided and abetted another who distributed
14 the narcotics or possessed the narcotics with intent to
15 distribute. The legal definitions of these three words,
16 possession, distribution, intent, must guide you in your
17 consideration of the first element. So let's take up those
18 three words. What does the law mean by possession? A
19 person who knowingly has direct physical custody or control
20 over a thing at a given time is then in actual possession
21 of it. Distribution. The word distribute means to deliver
22 a controlled substance. The word deliver in turn is defined
23 as the actual or attempted transfer of the drug. Intent.
24 The word intent refers to a person's state of mind. We
25 will come to intent in a few minutes. In sum, the words

1 hbh 8

2 "distributed a controlled substance" means to transfer or
3 deliver such a substance and the phrase "possess with intent
4 to distribute", means to have custody or control of an item
5 with the state of mind or purpose of transferring or de-
6 livering it. As I told you when I charged you, the defendant
7 accused does not have to physically possess it. He does not
8 have to have it on his person or in his hand. I told you
9 when I charged you that several people engaged in the theft
10 of a diamond, one of them has that diamond, a small thing,
11 actually physically holds that diamond either in his hand
12 or on his person, that does not if the circumstances in fact
13 warrant it, deny the proposition of law that ten others
14 had possession of it. The law doesn't say only the one
15 who has it physically in his possession can be held
16 accountable. Not at all. If that were so, it would mean
17 that ten people engaged in the distribution of drugs
18 only the one that actually physically possessed it could be
19 held accountable. That is not so. That is not the law.

20 Have I made myself clear so far?

21 The second count charges the defendant with having
22 unlawfully, wilfully and knowingly committed the offenses
23 set forth. Although these words almost define themselves,
24 nevertheless, they are set forth in the count of the
25 indictment to make certain that no one would be convicted

hbh 9

because of mistake or inadvertence or other innocent reason and so by the use of these words "unlawfully, wilfully and knowingly" the government must prove beyond a reasonable doubt a specific intent to commit a crime before there can be a conviction on Count 2, and the same of course, applies to Count 1. An act or failure to act is done knowingly if done voluntarily and purposely and not because of some mistake or inadvertence or carelessness or other innocent reason.

More precisely what is meant by wilfully in the eyes of the law means doing an act knowingly and purposely with bad intent. It means having the purpose to cheat or defraud or do a wrong. It means with specific intent to disregard the law or to do that which the law forbids. It involves a conscious wrongdoing and of course on the other hand, wilfully does not mean inadvertence or carelessness or honest misunderstanding of what the law requires and so carelessness or misunderstanding is not the equivalent of wilfulness. Wilfulness talks to the state of mind and that is an issue of fact as much as the state of his digestion. It is an issue that you are called upon to decide. Medical science has not devised an instrument which can record what was going on in a person's mind in the distant past or what motivated that person. The state of a person's

2 mind may be inferred from words, from his actions, from
3 his conduct. It has often been said that you bring into
4 the jury box with you your common sense and the experience
5 of your daily lives in the market place, in your home,
6 in dealing with all kinds of people and that is what makes
7 a juror such a tremendous force for the administration of
8 justice.

9 I think I told you and I tell you again one of
10 the greatest judges that ever lived, Mr. Justice Oliver
11 Wendell Holmes of the Supreme Court of the United States,
12 told us very plainly that the law is not logic, it is
13 experience and most of our lives, most of our laws and most
14 of our lives if they are well lived are based on the experience
15 of human behavior and that is what makes the juror so vital.
16 It is obviously impossible to ascertain or prove directly
17 what was the operation of the mind or the intention of any
18 defendant, but a wise and intelligent consideration of all
19 the facts and circumstances shown by the evidence and the
20 exhibits, the entire trial record in this case including
21 the behavior of the witnesses on the stand will enable you
22 to come to a conclusion with a reasonable degree of
23 accuracy what were the defendant's intentions? Intent I
24 say involves a mental attitude with a knowledge of a definite
25 act and with the knowledge of surrounding circumstances you

1 may draw a definite and logical conclusion. In your everyday
2 affairs, you are continuously called upon to decide from
3 the actions of others what their intentions are. You are
4 doing it all the time. Experience has taught us, again
5 I tell you, that actions speak more clearly than spoken
6 or written words. You must rely in part on circumstantial
7 evidence in determining the guilt or innocence of this
8 defendant or any defendant. Proof of the circumstances
9 surrounding a man's actions can supply an adequate basis
10 for a finding that a defendant acted knowingly and wilfully.
11 The actions of a man must be set in their time and place
12 just as the meaning of the words is understood only in its
13 relation to other words in a sense, so the meaning of
14 the particular act may depend on the circumstances surrounding
15 it. And the third element that must be proven beyond
16 a reasonable doubt, I refer again to the indictment which
17 charges that the narcotic drug controlled substance was
18 cocaine.
19

20 I instruct you as a matter of law that cocaine
21 is a prohibited drug controlled substance. You however,
22 must still find beyond a reasonable doubt that the substance
23 involved in this case was cocaine. You have before you
24 as one of the exhibits the stipulation in which Exhibit 1
25 in evidence the cocaine, obviated the necessity of calling th

1 hbh 12

2 chemist to the stand and told you what he would testify
3 if he were called to the stand. That the substance was,
4 Government's Exhibit 1 was and is the prohibited drug, to
5 wit, cocaine.

6 Now you remember I told you I would talk to
7 you about aiding and abetting which is a part of the statute
8 governing Count 2. It is not necessary for the government
9 to show that the defendant physically committed the crime
10 himself. The law provides that a person who aids and
11 abets another to commit an offense is as guilty of that
12 offense as if he had committed it himself. Accordingly
13 you may find the defendant guilty of the offense charged
14 in Count 2 if you find beyond a reasonable doubt that any
15 of the others named in the indictment, namely Jaime Valdes
16 or Prikas, committed the offense and that the defendant
17 aided and abetted him. To determine whether the defendant
18 aided and abetted the commission of an offense, you ask
19 yourselves these questions:

20 Did he associate himself with the venture? Did he
21 participate in it? As something he wished to bring about?
22 Did he seek by his action to make it succeed? If he did,
23 then he is an aider and an abettor in contemplation of law.
24 In this connection, I instruct you that mere presence
25 at the scene of a narcotics transaction together with knowledge

1 hbhl3

2 that such a transaction was occurring will not suffice
3 to render a defendant guilty of aiding and abetting. In
4 other words, to convict the defendant in this case you must
5 be convinced beyond a reasonable doubt that he was doing
6 something to forward the crime. That is, that he was
7 a participant rather than a knowing spectator. So the law
8 provides that anyone who knowingly aids or abets another
9 in any manner in the commission of a crime is equally
10 guilty of the commission in that crime and is himself
11 a principal and may be charged directly with the commission
12 of the crime as principal and convicted upon such charge
13 although the evidence indicates that he only aided and
14 abetted in the commission of the crime and did not have
15 a major part in the undertaking. He aids and abets
16 if knowing a crime is being committed what he does helps
17 make possible or causes the commission of the crime.

18 You remember I pointed out to you at one point
19 in the course of my charge about the fellow at the top
20 and the fellow that is running the errands. As long
21 as there is a knowledge, a mutual understanding of the
22 objective of the conspiracy, I pointed out to you and as
23 long as both the big shot so to speak and the little errand
24 fellow were parties to it, one really is aiding the other,
25 no matter how small his function may be, even if it were just

1 hbh 14

2 answering telephone calls or putting through telephone calls.

3 The law says then that he who aids and abets
4 another is in the eyes of the law even though his part, the
5 part he plays is minor, the law says very distinctly that
6 if he aids and abets in furthering the purpose and is aware
7 of it and fully intends to do exactly that, the law says
8 he is as much responsible and as much legally responsible
9 as the one who actually does the major portion of the
10 total enterprise.

11 I hope you will not hesitate if there are any
12 other questions of any kind or even if you want to ask me
13 something more based on what I have just given you, I ask you
14 with great respect not to hesitate to write and let me come
15 out and do my best to explain.

16 Thank you.

17 (Jury leaves the courtroom)

18 THE COURT: Marshal, please close the door.
19 Take your seats.

20 If there are any comments with regard to the
21 court's supplemental charge as just delivered, it is now
22 3:27, state it on the record.

23 MR. BENTLEY: Nothing from the government, your
24 Honor.

25 MR. LEWIS: Yes, the defendant respectfully

1 hbh 15

2 excepts to several parts, your Honor, if I may list them.

3 THE COURT: Certainly.

4 MR. LEWIS: I except to that portion of your
5 Honor's charge referring to the example specifically the
6 theft of the diamond and the other example with regard to
7 telephones. I except to the court's charge aiding and abetting
8 in that that was not requested by the jury in their note,
9 the note having asked for two specific things with reference
10 to charge 2 and reasonable doubt. I except to that
11 portion of your Honor's charge -- that is reference to aiding
12 and abetting again. I don't have to repeat that. I except
13 to that portion of your Honor's charge where you mention
14 you could not have a conviction of anyone when the court
15 was speaking of reasonable doubt. I except to that portion
16 of your Honor's charge where the court speaks to the jury
17 on sort of a personal basis by saying have I made myself
18 clear so far? I except to that portion of your Honor's
19 charge where the court went into the operation of the mind
20 and the court stated that or words to the effect it is im-
21 possible to prove what the operation of the mind or intention
22 of the defendant would be. And that portion of your Honor's
23 charge where it refers to actions speaking more clearly
24 and relying on circumstantial evidence and proof of circum-
25 stantial evidence surrounding the circumstances might mean

that the action can supply the basis for the acts or words to that effect. I couldn't write it that quickly. I feel that all these specific items that I just mentioned were beyond the request of the jury and I therefore respectfully except, your Honor.

THE COURT: Very well. That is noted on the record.

(In open court, jury not present.)

THE COURT: Gentlemen, I have decided that I would call to your attention some items that have distressed me.

Rather than wait until the verdict is arrived at. Because regardless of the verdict what I am about to take up with you calls for further inquiry. What is it that distresses the judge? I wanted to mention it last week but decided that I would think about it over the weekend and make certain that I should enter upon this course of action and I have decided affirmatively and I am doing so right now. In the first place, Mr. Lewis, will you please tell me how you carried on your pre-trial conferences with your client, were some of those conferences in English?

MR. LEWIS: All the pre-trial conferences with my client were either with his wife present or one of my secretaries present who speaks Spanish.

THE COURT: You never spoke to him in English?

MR. LEWIS: I spoke to him in English and I also would at times have somebody interpreting because as the court saw, he speaks English and he has difficulty with certain words.

THE COURT: Did he speak some English to you?

MR. LEWIS: Absolutely.

THE COURT: He did?

MR. LEWIS: Sure.

THE COURT: That is the point. You came into the trial knowing that he did speak some English and it became your duty under the law to so inform the court. The court would have undoubtedly gone along with your request that the interpreter remain by his side, but the way you did it and the way that it offended you had the interpreter here from the moment the case was called for trial, there wasn't a word out of him, there was no need to have a word out of him but there certainly was nothing out of you to indicate that this defendant didn't understand English and this judge who has been around quite a bit got the distinct impression that he was absolutely unlearned, completely ignorant almost of the English language. The jury certainly were laboring under that impression until the time came when you decided to call him to the stand. Then I made the remark which I did to the effect that in light of the

1 hbh 18

2 testimony that he the defendant had engaged in a conversation
3 in English with the government agents, I wanted to see how
4 far he could carry on as a witness without the interpreter,
5 so that the jury could decide whether or not he understood
6 those matters that were taken up by the federal agents with
7 him. Don't you see, the way he acted in the court with
8 your consent, that behavior went to the very issue as to
9 whether or not he was able to understand what the agent
10 said he did understand. It was your duty under the law,
11 Mr. Lewis, to have said to me in effect, judge, I have
12 got a man here who is not conversant with English, he has
13 a knowledge of some English which will enable him to take
14 care of ordinary questions. I think possibly your Honor
15 ought to test this out in the absence of the jury, but I
16 do want to put you on notice that I know that he can speak
17 some English. Your Honor may be somewhat worried about--
18 if I do call him to the stand about his testifying and
19 all of those things should have been called to my attention
20 and frankly, it looked as though there was someone putting
21 one over to use the vernacular and this is not a lawyer's
22 behavior if he wants a fair trial, he's got to participate
23 fairly himself. It didn't seem to me that that was
24 fair play.

25 Now, there is another thing that I must tell you

1 hph 19

2 very frankly that distresses me and that is in the light
3 of what took place after the event that I am about to
4 mention, in the light of what took place since then, Mr.
5 Lewis, I am obligated to call it to your attention because
6 I want an answer within two weeks after this case is over.
7 I don't want to make a big deal out of this but I certainly
8 want your answer in writing and I will take it that way
9 without -- or any other fashion that you wish to give it
10 to me, but I want your answer. The second point, Mr. Lewis,
11 relates to Exhibit 6. You recall that you took a very firm
12 position that by reason of the insignificant notice to you
13 to prepare properly to meet Exhibit 6, I should exclude
14 it and not allow it to go into evidence. One of the things
15 that Mr. Bentley stated in the course of the discussion
16 and appears on the record is that he called you about the
17 middle of last month and the essence of what he said as an
18 officer of the court was that he told you about this exhibit
19 and invited you to come down and examine it in his office.
20 I have forgotten all the other items that he said were
21 discussed with you at that time. In answer to that, you
22 didn't say I don't recall, you didn't say anything like
23 that at all. You said that that never happened.

24 I said when I made a ruling that I was satisfied
25 that Mr. Bentley was giving me an accurate statement and I

hph 20

excused you, Mr. Lewis, on the ground of possibly other engagements had clouded your memory on that, but I must in all frankness say to you that in the light of the interpreter's feature here which I mentioned as my grievance number 1 and I don't want to have to give it in detail, you know what I am talking about, in the light of that and other items that I took up on and off the record, I want you to know very frankly that I am going to ask you to search your memory, search your records and I am going to tell the government to do the same. I want to know what records there are of that particular conversation or what else there is to support it, to support the position taken by either one of you because that was a very, very pertinent and vital item. It had a great deal to do with the court's decision to receive into evidence Exhibit 6 which was not a minor exhibit. The third item that I want to call to your attention and like to get an answer from you, Mr. Lewis, during this trial there have been at least two requests to have read certain testimony. That testimony was read and during the reading of the testimony, I saw it with my own eyes, Mr. Lewis, there were throughout the readings very seldom hardly at all did you keep a placid face. Your face was one of exaltation or one on other occasions of mockery and I noticed that there were two or

1 hph 21

2 three jurors who saw you. I myself looked at you and yet
3 you kept it up and I have a feeling that you saw my gaze.
4 A lawyer under those circumstances is supposed to show
5 absolutely no reaction whatever, but yours I maintain was
6 open and clearcut and as the fact finder, I say that no one
7 who has been around at all could have possibly misunderstood
8 your facial expressions. I don't want you to be taken unaware
9 and therefore I have allowed this period of two weeks from
10 the time this case comes to a close, I hope it will be
11 today, but when this verdict comes in whatever it is,
12 two weeks from that date or to be absolutely sure, we will
13 make the date. We will fix it right now so there will be
14 no question as to what the judge says. Today is the 13th,
15 two weeks from now would be the 27th. If you want the 28th,
16 that is all right with me too, I will put it down for the 28th.

17 (Recess at 3:40 P.M.)
18
19
20
21
22
23
24
25

2 (At 6:15 p.m. Jury in box.)

3 THE COURT: It is now six-fifteen, and I wanted to
4 talk to you because I am concerned with your own convenience.
5 If I thought that by talking to you this way I had a jury
6 that was going to let the cold or the food or hours interfere
7 with their position, I would not talk this way. I hardly
8 ever have had a jury that is not an understanding jury.

9 If you are going on with your deliberations, you
10 have two, maybe even three choices. If you are going to take
11 dinner, I don't want them to give you leftovers. I want them
12 to get the order and get ready to serve you at dinner, and I
13 will send you there. I have already ordered the limousines.
14 They will be here, and I can advance the time. If you want
15 to go home now, the limousines will take you home and bring
16 you back tomorrow. You have to come back tomorrow, of course
17 and there is nothing wrong about that.

18 If you feel like going on, by all means do it. All
19 I want is to make sure that if you are going to stay and have
20 food, I want you to know that I have been around here long
21 enough to know that unless you get there in time you won't
22 get the food that you are entitled to have. I just would
23 like you to decide what you are going to do.

24 Send me a note, and we will carry it out accordingly.
25 ly.

1 ewP 23

2 Let me see what else I wanted to say on that. You
3 can go home; you can come back. When you get through with
4 your dinner, stay as long as you choose. The cars will wait
5 and take you when you say you want to go.

6 Mr. Foreman, I don't know what else I can say or
7 do. Yours is the burden for all of us, and all I am trying
8 to do is try to make it as convenient for you as possible,
9 because I know this is a genuine labor of mission that you
10 have cut out for yourselves, and it deserves nothing but the
11 highest applause.

12 Thank you very much. Let me hear from you as soon
13 as you can.

14 (The jury left the courtroom to resume deliberating
15 upon a verdict.)

16 (At 8:10 p.m.)

17 THE COURT: Let the record show that the jury re-
18 turned from dinner about eight o'clock, and I thank you for
19 being expeditious about it.

20 There are a few things I want to say to you before
21 you resume your deliberations.

22 You have been deliberating now for a great number
23 of hours without agreeing upon a determination of the prin-
24 cipal fact issues in the case. I want to make it perfectly
25 clear that what I am about to say to you is not with a view

1
2 to coercing you into a verdict, certainly not to rush you
3 into a verdict or in any way to indicate impatience with
4 your failure to have arrived at a verdict by this time.

5 This is no attempt to persuade those jurors who,
6 after thorough consideration, deliberation, argument, have
7 reached a conclusion, to change that conclusion. But I do
8 believe that some remarks by the Court may possibly aid you
9 in your deliberations.

10 This is an important case. The trial of this case
11 was comparatively simple. The fact issues have been sharply
12 delineated.

13 The trial has been expensive to both sides. If
14 you should fail to agree on a verdict, the case is left open
15 and undecided. Like all cases, it must be disposed of some
16 time. There appears to be absolutely no reason to believe
17 that another trial would not be equally expensive, nor does
18 there appear any reason to believe that the case could be
19 tried again more exhaustively than it has been on either
20 side.

21 Any future jury must be selected in the same manner
22 and from the same source as you have been chosen. So there
23 appears no reason to believe that the case would ever be
24 submitted to twelve jurors more intelligent, more impartial
25 or more competent to decide it.

1 ewP 25

2 You know I have been saying that in essence all the
3 way along, not just now.

4 Nor is there any reason to believe that there is
5 any more or clearer evidence that can be produced on behalf
6 of either side.

7 While undoubtedly the verdict of the jury should
8 represent the opinion of each individual juror, it by no
9 means follows that opinions may not be changed by a confer-
10 ence in the jury room. The very object of the jury system is
11 to secure unanimity by a comparison of views, by arguments
12 among jurors themselves.

13 It is normal for jurors to have differences. So
14 do judges. I have attended meetings of judges where many of
15 them boiled over for a principle. I don't care what you
16 read or what you have heard to the contrary. I have seen
17 them grow excited, almost to the point of having apoplexy,
18 over a point that they believed in. But after arguing it out
19 and after persuasion, some see the light of day, so to speak,
20 on a side of the tracks that they had not discerned before.
21 That is human. That is all I am asking you to do.

22 So it is as normal for jurors, who, after all, are
23 judges of the facts, just as the Judges are judges of the law.
24 It is perfectly normal to have differences. This is quite
25 common.

ewP 26

Frequently, jurors, after extended discussion, may find that a point of view which originally represented a fair and considered judgment might well yield upon the basis of argument, upon the basis of further discussion and upon the further review of the facts and the evidence. Frequently further consideration may indicate that a change in original attitude is fully justified upon the law and the facts.

Let me quote to you from the Supreme Court of the United States.

"Although the verdict must be the verdict of each individual juror, they should listen with a disposition to be convinced of each others' argument. If the much larger number were for conviction, a dissenting juror should consider whether his doubt was a reasonable one which made no impression upon the minds of some of the jurors equally honest, equally intelligent as himself or herself.

"If, upon the other hand, the majority were for acquittal, the minority ought to ask themselves whether they might not reasonably doubt the correctness of the judgment which was not concurred in by the majority."

That is the end of the quote.

It cannot be that each juror should go into the jury room with a blind determination that the verdict shall

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2 represent his or her opinion of the case at that moment or
3 that he should close his or her ears to the arguments of
4 men and women who are equally honest and intelligent as him-
5 self or herself, who bear the same responsibility, serve under
6 the same sanction of the same oath and have heard the same
7 evidence with, we may assume, the same attention and an equal
8 desire to arrive at the truth.

9 Remember, this is merely a plea by the Judge that
10 you take this into consideration. It is not a plea by the
11 Judge that you alter your convictions, alter your determina-
12 tion. If after considering what I say to you you still
13 cling to the vitality of your own position, so be it. That
14 is what a jury system is all about: to argue, to present, to
15 respect, to weigh, to take into consideration this or that
16 fine point and that big piece of evidence, this part, that
17 part, whatever it is, to listen to others: and if, after you
18 have done that, you are unconvinced that your stand should be
19 altered, stand firm, if that is what you think your oath de-
20 mands of you.

21 So you know my great respect for you. You must
22 feel it. I told you once before and I tell you again, I live
23 on the spirit of this kind of devotion to duty. Whatever
24 you may think, those of you who disagree with, you might
25 think, the obstinate views of someone else, to me, when jurors

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2 hold precious a mission so vital, I can do nothing less than
3 bow with humility before a spirit that produces such a posi-
4 tion.

5 And so I conclude by saying: remember at all times
6 that no juror is expected to yield a conscientious conviction
7 he or she may have as to the weight or effect of evidence;
8 but remember also that after full deliberation and consider-
9 ation of all the evidence, it is your duty to agree upon a
10 verdict if you can do so without violating your individual
11 judgment and your conscience.

12 Consequently, I will ask you to retire to the jury
13 room to continue your deliberations and carefully re-examine
14 and reconsider all the evidence bearing upon the questions
15 before you. And remember, too, that we stand in readiness
16 to help you in the pursuit of your vital mission.

17 Marshal, will you be good enough to take the jury
18 back.

19 (At 3:20 p.m., the jury left the courtroom to
20 resume deliberating upon a verdict.)

21 (At 9:45 p.m.)

22 (Jury in box.)

23 THE COURT: Mr. Clerk, won't you please proceed.

24 (The roll of jurors was called. All answered
25 present.)

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2 THE CLERK: Mr. Foreman, have you agreed upon a
3 verdict?

4 THE FOREMAN: Yes; we have.

5 THE CLERK: How do you find the defendant on Count
6 1?

7 THE FOREMAN: We find the defendant not guilty
8 on Count 1.

9 THE CLERK: How do you find the defendant on
10 Count 2?

11 THE FOREMAN: We find the defendant guilty on
12 Count 2.

13 THE CLERK: Members of the jury, listen to your
14 verdict as it stands recorded. You say you find the defend-
15 ant not guilty on Count 1 and guilty on Count 2, and so say
16 you all?

17 (Each juror, upon being asked by the clerk of the
18 court if the verdict as recorded was his or her ver-
19 dict, responded affirmatively.)

20 THE COURT: Ladies and gentlemen of the jury, I
21 have never, in all the years I have been a Judge, commented
22 on a jury's verdict. I have always believed that it is their
23 business, that it is their responsibility. They have the
24 community's interests in justice and in the doing of justice,
25 and so I am not going to comment on your verdict in any way

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2 whatsoever.

3 What I am about to say I would say if your verdict
4 was the very opposite, and that is to tell you, as I have
5 already indicated, that when a jury labors and pretty nearly
6 exhausts itself, as you have, who have been painstaking,
7 whose notes to the Judge show a keenness and a striving
8 toward a resolution of the conflict, a Judge is renewed and
9 almost rededicated to his mission, and it enables him to
10 cry forth any time anyone says that no one gives a hoot
11 about justice and that everybody is engaged in grabbing off
12 something for himself and there is no genuine citizen inter-
13 est in courts or community activity.

14 I could never buy that, because I see eloquent
15 proof over and over again that those who make that false
16 accusation do not know what they are talking about.

17 It is so easy to hurl charges of lack of courage
18 and lack of this and that that belong in the armament of
19 American fortitude and make nothing of it.

20 I find that people, in the main, are wrapped up
21 in decency and openness, in putting it on the line, in deal-
22 ing fairly and that they are the ones who weep at those who
23 belittle these firm principles that we refuse to thrust
24 aside.

25 We all need encouragement. A jury needs it as much

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2 as anyone else. When I see this jury operate in the fashion
3 that you have, saying that your luncheon should be brought
4 in, sitting hour after hour, paying attention, as I have
5 had occasion to observe, from the commencement of this
6 trial, the acme of a jury trial has been achieved, and I
7 point to this with pride.

8 You weren't there when this happened, when all of
9 this took place on the date with which we are concerned.
10 Neither was I. It is a flashback. You take bits and pieces,
11 and you look at them almost microscopically in order to de-
12 termine their true worth; then you argue and you thresh it
13 out, and you almost get to the point where you denounce one
14 another for holding views contrary to your own, and out of
15 that comes a verdict.

16 Never has truth survived by a limp performance. It
17 is always by hammer blows. The doing of justice, precious
18 as it is, requires exactly the labor that you gave this case.
19 Anything worth while in life is hard to come by, whether it
20 is the giving birth of a child or accepting with grace the
21 last moment on earth. And so it is with justice. It isn't
22 like buying another can of beans. You have to sweat over
23 it, almost persecute yourself to come up with the right
24 answer.

25 And so I salute you for straining yourselves to the

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2 limit to arrive at what in your judgment was the verdict
3 due in this case. I thank you. I thank you not only as a
4 Judge but as a human being who has long been devoted to the
5 idea that a job to be well done takes almost every molecule
6 of dedication. I mean a job such as the doing of justice.
7 I am not talking about an ordinary business venture. I am
8 talking about something that is so meaningful to all of
9 us, to you, to your children, to your friends, to your rela-
10 tives, your whole community.

11 I have talked, first because I mean every word of
12 what I have said and secondly because your cars will not be
13 here for another three or four minutes.

14 Mr. Clerk, will you let me have the list of jurors.

15 Mr. Fox, your written notes can almost be a stand-
16 ard. They were right to the point. We worried, as all of you
17 did.

18 Mr. Bush, your countenance, as I watched it, showed
19 a demand deeply entrenched in a challenge.

20 Mr. Rumberg, you were popping all over the place
21 with anxiety, and, Mr. Teitelbaum, the same thing. Your fore-
22 head was furrowed at times as you stretched to get the maxi-
23 mum out of what was being unfolded.

24 Mr. Winkler, you with your quick desire to say
25 something that would produce a bit of humor, the wonderful

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2 spirit with which you did it, that you showed in your desire
3 not to look at everything too seriously and overwhelmingly,
4 but when it came to the test you threw aside any jokes, and
5 you addressed yourself to what was required of you.

6 Mr. Coleman, I watched you. The Judge watches
7 faces, and it was a study in complete concern for what was
8 going on. You did not want to miss a thing.

9 Mr. Garrett, you with your horrible wound that made
10 you a victim of some atrocious bit of deportment on the part
11 of a thoughtless creature, brought your smile to this pro-
12 ceeding and helped things along.

13 Mr. Warner, you watched us all trying to see if you
14 could fathom what was behind our words, and you did not spare
15 the Judge.

16 Mr. Meyer, the same goes for you. It was quite a
17 study to see you grasp not only words but syllables and frag-
18 ments of words.

19 Mrs. Crawford, you were, may I say, a particular
20 force. You, with your quiet smile, in trying to be sure
21 that you did not accept that which had an iota of uncertainty.

22 Mr. Zalkin, likewise with you. As you turned your
23 head you seemed to indicate this did not sit too well with
24 you and then again whether something else might not really
25 require another examination. You were searching, as all of

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77.3

2 you were.

3 And Mr. Horowitz, you were almost immobile. One
4 could never guess where you stood. You were not going to
5 give us the slightest inkling, and that's the way it should
6 be.

7 In sum, then, we had a jury that did not waste a
8 second. It was almost unbelievable that you concentrated so.

9 Marshal, be good enough to take these ladies and
10 gentlemen to their respective homes. I hate to announce this,
11 but the clerk tells me that I must do it, that you have to
12 report -- when do they have to report?

13 THE CLERK: In the morning, at nine o'clock, in
14 Room 109, your Honor.

15 THE COURT: It is now ten o'clock, and by the
16 time they get home it will be close to eleven. They have
17 had a full day.

18 JUROR NO. 12: I won't be home until twelve.

19 THE COURT: He won't be home until twelve.

20 Mr. Clerk, will you step up here.

21 (Discussion off the record.)

22 THE COURT: I am going to take on the whole court-
23 house. They need you. I am satisfied with that. The de-
24 mand for jurors is enormous. I am the Court. I thought I
25 would be able to work out something. I can't. I am going to

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2 take it on my own head. You are supposed to be down there
3 at nine. Don't disappoint me. Be there at ten-fifteen.

4 JUROR NO. 3: Your Honor, my mother is going to
5 have open-heart surgery tomorrow. Could I come a little
6 later?

7 THE COURT: Who?

8 JUROR NO. 3: My mother. Could I come in a little
9 later?

10 THE COURT: Yes. I say so.

11 JUROR NO. 3: I will be here tomorrow about twelve
12 o'clock.

13 THE COURT: And Mr. Meyer, you had a problem
14 and you wanted to speak to me about it, and I told you I
15 couldn't speak to any juror while the case was on, even
16 though it was a private matter and had nothing at all to do
17 with the case.

18 I know that you wanted to speak to me, and I told
19 the clerk to tell you, and I am sure he did, that I could
20 not talk with any juror about anything while the case was
21 going on.

22 JUROR NO. 9: I know that.

23 THE COURT: What can I do for you?

24 JUROR NO. 9: The company that I am with has a
25 case in this court on Friday, and I will be involved in

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2 testimony, and I need the balance of the week before I come.
3 I would appreciate it if you could make a recommendation to
4 the clerk that I be excused for the balance of the week.

5 THE COURT: For the balance of this week?

6 JUROR NO. 9: And I think there are some other
7 jurors --

8 THE COURT: The only thing is this: I don't want
9 them to think that I have scuttled what they are depending
10 on, and I am trying to figure out -- I will take it on my
11 own head, but I have to have at least something on the
12 record to show that I did not willv-nilly say, "Go ahead."

13 I gathered that you had some problems, Mr. Meyer,
14 so I am going to take that responsibility, and that goes for
15 you and Mr. Romberg.

16 JUROR NO. 3: I will be here tomorrow.

17 JUROR NO. 9: So I don't have to come in at ten-
18 fifteen tomorrow?

19 THE COURT: No. I am going to see that they -- let
20 them take me to task. You don't report until they get in
21 touch with me.

22 You said you would not be here until what time.
23 Mr. Romberg?

24 JUROR NO. 3: Twelve o'clock.

25 THE COURT: I certainly hope things are much

better.

One of the Judges in this court just underwent that kind of thing. She is doing handsomely. You have to be patient about it.

Good night.

All the rest of you are due there at ten-fifteen.

May I thank the marshals for all that they have done. Thank you very, very much. Good night.

(The jury left the courtroom.)

THE COURT: Mr. Lewis, any motions?

MR. LEWIS: Yes; I have, your Honor.

At this time, I would move to set aside that portion of the jury's verdict as addressed itself to Count 2 of the indictment as being inconsistent and contrary to the weight of the evidence, and there can be no basis for finding the defendant guilty on Count 2 and innocent on Count 1.

I further move for a dismissal of that portion of the jury's verdict as addressed itself to Count 2, on all the other grounds that would be available to me under the statutes in the United States Code.

THE COURT: Does the Government care to answer the particular point raised by counsel as to the jury verdict on Count 2 of guilty and an acquittal on Count 1?

MR. BENTLEY: At this time I don't feel fully prepared to answer to the contention, and I think it would be appropriate for counsel to submit papers on the point.

THE COURT: All right. According to the rules of the court, we will consider, Mr. Lewis, that you have placed on the record an oral presentation to be buttressed by papers and by memorandum between now and the date set for sentence.

MR. LEWIS: Your Honor, I also ask the Court to continue the defendant on bail.

THE COURT: Wait. We will come to that in a minute.

The Court will set a date for sentence. I would like to know, before I fix the date -- I think the Government ought to speak up and tell the Court what the Government is asking be done with regard to the defendant insofar as his bail or any other of the many provisions that are applicable to this situation are concerned.

MR. BENTLEY: Yes, your Honor. I believe the defendant is presently at liberty on a --

MR. LEWIS: \$10,000 recognizance --

MR. BENTLEY: Yes, a \$10,000 personal recognizance bond.

MR. LEWIS: Signed by his wife also, your Honor.

MR. BENTLEY: Secured by \$1,000 cash.

At this time, the Government makes application to have the defendant remanded to the custody of the United States Marshals. Among the factors which lead to this application are the fact that the defendant is not an American citizen; he has a close relative, a brother, with a business in Colombia, and he testified that he was at one time at least interested in becoming a partner in that business.

He, moreover, has seen a co-defendant in this case, Hyme Valdez, thus far escape the processes of justice by fleeing the country to Colombia; and, finally, he testified on the stand in this trial, and the jury found, at least to a certain degree, his testimony was not a true story, and the fact that he remained in the Southern District awaiting trial may be due more to his belief that he could, by so testifying, escape the verdict that was rendered rather than any inherent respect or recognition for the obligations of being on bail.

MR. LEWIS: May I speak, your Honor?

THE COURT: Surely.

MR. LEWIS: The defendant has appeared at all times when he was required to, and he has never made any attempt to leave, despite the fact that this man, Mr. Valdez, who was his brother-in-law, or who is his brother-in-law, did

run away.

I have spoken to his wife and to him on several occasions during the course of the time I have been representing him, and at no time has there ever been any indication that he would run away.

In fact, his wife and he had a discussion where his wife said that she would never have anything to do with him if he did run away, because she did not want him to be a fugitive, and she certainly had no intention to be associated with any fugitive.

He has always worked. His income tax records were submitted here. He has been a permanent resident for approximately eight years. He has resided at the same address. He was under a possible penalty of thirty years and \$30,000 fine and never made any attempt to leave or do anything improper, and, at this point, he is now under a possible penalty of fifteen years and \$15,000 fine, and, yes, we still have the question of his motion, which I made and which I feel very sincerely about, although I can't say to the Court that I know I am one hundred per cent right. I have no way of knowing at this point.

I would ask the Court to please continue bail in this case. This man has a wife and a child, whom he has always supported and still supports.

1
2 I would further also just point out one other thing
3 and that is that the Government's own papers -- and I forget
4 which one it was -- indicated, prior to anything else -- of
5 course, it is hearsay, but it indicated that they did not
6 think Mr. Cuadros was in any way a leader or principal, major
7 principal in the matter pertaining to Mr. Valdez and Mr.
8 Prikas and the other gentlemen who were mentioned during the
9 course of this trial, but that rather, if he were involved,
10 he was involved as a, well, fringe-type individual; and I
11 would further just add, if I may, your Honor, that the ver-
12 dict of the jury itself would indicate, at least in substance
13 that they agreed that this man is innocent, and, as I say, it
14 is completely inconsistent in my mind with any of the allega-
15 tions.

16 THE COURT: The jury has returned the verdict pro-
17 claiming this defendant guilty on Count 2. That was their
18 function. I am bound by it, and that is not to indicate that
19 I disagree. Whether I disagreed or not would have not a
20 blessed thing to do with it. The jury has returned a verdict
21 of guilty on Count 2. The charge is extremely serious.
22 There was a meticulous trial here. You, Mr. Lewis, strained
23 yourself to break down every witness that came on the stand,
24 and that was your job, and you were relentless, as you should
25 be, in pursuing those who took the stand against your client.

Despite that, we have this verdict.

On top of that, let me say very candidly that it is something that a Judge must bear in mind. I saw the defendant. I saw him from the very beginning of this trial. I noted his behavior while he was on the witness stand.

Regardless of what the jury might have done in this case, the impression I got of the defendant was not a favorable one.

I am not here to agree with you or anyone. I've got to call it as I see it. He did not impress me favorably. I really believe that he is a smooth operator. I believe there is some merit in the Government's position with respect to the reappearance of this defendant for sentence.

I don't want to belabor the point, but I am going to direct that there be a thorough pre-sentence investigation and I am setting it down for four weeks and two days from today, which will be the 12th of January at ten a.m., before this Judge. Consult the Law Journal.

I am constrained to and do remand the defendant for sentence.

Mr. Clerk, be good enough to announce an adjournment of this Court until tomorrow morning at ten o'clock.

(Adjourned, for sentencing, to January 12, 1976,
at 10:00 a.m.)

UNITED STATES DISTRICT COURT:
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA,

- vs. -

NOTICE OF MOTION

JAIMÉ VALDES, RAFAEL CUADROS,
et al.

75CR1254

Defendants.
-----x

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affirmation of FREDRIC LEWIS, ESQ., duly affirmed the 6 day of October, 1976, and upon all the papers and proceedings heretofore had herein, the undersigned will move this Court before the HON. IRVING BEN COOPER, to be held at the Federal Court House, located at Foley Square, Borough of Manhattan, City and State of New York, on the 20 day of October, 1976, at 10:00 A.M. in the forenoon of that day, or as soon thereafter as counsel may be heard.

(I) For an Order dismissing the indictment against the defendant, RAFAEL CUADROS, for the failure of the UNITED STATES Attorney to serve a copy of the indictment upon the defendant, or counsel for the defendant.

(II) For an Order suppressing any alleged contraband or narcotic, or control substance, allegedly received or seized by the UNITED STATES Government in connection with the said charges herein against the defendant, RAFAEL CUADROS.

(III) For an Order directing the UNITED STATES Attorney to serve upon the attorney for the defendant, RAFAEL CUADROS, copies of the minutes of the Grand Jury in the above matter, as well as all 3500 material.

(IV) For an Order directing the UNITED STATES Attorney to deliver to the Court copies of the Grand Jury Minutes in the within matter, and for an Order dismissing the indictment against the defendant, RAFAEL CUADROS, for failure of proof with regard to probable cause that a crime was committed with regard to the defendant, RAFAEL CUADROS; and

(V) For such other and further relief as to this Court may deem just and proper.

Dated: New York, New York
October 6, 1976.

Yours, etc.

FREDRIC LEWIS, ESQ.
Attorney for Defendant, RAFAEL CUADROS
30 Vesey Street
New York, New York 10007

TO: ALLAN LEVINE
Asst. U.S. Attorney

UNITED STATES DISTRICT COURT:
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA,

- vs -

AFFIRMATION

JAME VALDES, RAFAEL CUADROS,
et al.,

Defendants.
-----x

FREDRIC LEWIS, ESQ., an attorney at law duly admitted to practice before the United States District Court of the Southern District of New York, does hereby affirm under the penalties of perjury, that the following statements are true, unless stated to be on information and belief, based on an examination of your deponent's file herein, and discussions had with the defendant and others.

I. I am the attorney representing the defendant, RAFAEL CUADROS.

II. I am familiar with the facts and circumstances of the matter before this Court.

III. This affirmation is made in support of defendant's, RAFAEL CUADROS, motion for an Order suppressing any alleged

contraband or control substance allegedly received or seized from the defendant, RAFAEL CUADROS, or the co-defendants, individually or collectively, and for an Order dismissing the indictment herein.

IV. That on/or about December, 1975, the defendant, RAFAEL CUADROS, was indicted together with the defendant, JAIME VALDES, for alleged violation of Sections 812, 841, and 846 of Title 21 of the United States Code.

V. That, upon information and belief, a superceding indictment was subsequently handed down against the defendant, RAFAEL CUADROS, and/or other defendants. That your deponent was never served with a copy of the aforementioned superceding indictment.

VI. That at a conference before this Court on September 8, 1976, MR. ALLEN LEVINE promised to supply your deponent with a copy of the superceding indictment. That no such indictment has been served upon your deponent's office, although your deponent had called MR. LEVINE'S office on two (2) separate occasions and had written to him on September 22, 1976.

VII. Further, it was understood by your deponent that MR. LEVINE would contact your deponent with regard to supplying him with various 3500 material, so as to obviate the need for

necessary motions.

VIII. That MR. LEVINE has wholly failed to contact your deponent's office and that your deponent's office has not been contacted by any member of the UNITED STATES Attorneys office although, as hereinbefore noted, your deponent has made attempts to contact the UNITED STATES ATTORNEY'S office and specifically, MR. ALLEN LEVINE.

IX. Upon information and belief, your deponent has been informed by the UNITED States Attorney's office, that MR. CUADROS was arrested while a passenger in his brother-in-law's vehicle, and at the time of the aforementioned arrest, a package allegedly containing narcotics was found in the vehicle.

X. Upon information and belief, your deponent has been advised that there was no warrant to seize or search any property in the possession of the defendants, or in the proximity of the defendant, RAFAEL CUADROS.

That upon information and belief, if any substances were seized, they were not seized pursuant to any authorized search and seizure, and therefore, any seizure was unwarranted and illegal, and in violation of defendant's constitutional rights, in that no search warrant was secured for the

seizure or search of any defendant herein.

XI. That, further, any statements of any alleged co-defendants should be suppressed with regard to the defendant, RAFAEL CUADROS, in that the defendant, RAFAEL CUADROS, would be prevented from calling any co-defendant as a witness and confronting him in open Court.

Dated: New York, New York
October 6, 1976.

/s/
FREDERIC LEWIS

ROBERTA TWE JR

SO. DIST. N.Y.